

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN S. PENROD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 07-cv-02-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner John S. Penrod's ("Penrod") motion for a certificate of appealability (Doc. 18). As a preliminary matter, the Court notes that Penrod has not yet filed a document labeled "Notice of Appeal." However, the contents of his pending motion evidence an intent to appeal the Court's denial of his motion to vacate his sentence pursuant to 28 U.S.C. § 2255 to the Court of Appeals for the Seventh Circuit and therefore satisfy the requirements of Federal Rule of Appellate Procedure 3(c)(1). Accordingly, the Court **CONSTRUES** the motion for a certificate of appealability (Doc. 18) to contain a notice of appeal and **DIRECTS** the Clerk of Court to docket it as such as of the date it was filed.

A § 2255 petitioner may not proceed on appeal without a certificate of appealability. 28 U.S.C. § 2253(c)(1); *see Ouska v. Cahill-Masching*, 246 F.3d 1036, 1045 (7th Cir. 2001). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Tennard v. Dretke*, 542 U.S. 274, 282 (2004); *Ouska*, 246 F.3d at 1045. To make such a showing, the petitioner must "demonstrate that reasonable jurists could debate whether [the] challenge in [the] habeas petition should have been resolved in a different manner or that the issue presented was adequate to deserve encouragement to proceed further." *Ouska*, 246 F.3d at 1046; *accord Tennard*, 542 U.S.

at 282; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (certificate of appealability should issue if the petitioner demonstrates “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”) The Court finds that Penrod has not made such a showing and, accordingly, **DENIES** the motion for a certificate of appealability (Doc. 18).

IT IS SO ORDERED.

DATED: January 8, 2008

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE